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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,535	06/27/2003	William J. Ryan	2113.0040008/RWE/ALS	4241

26111 7590 04/11/2005

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EXAMINER	
VAN, QUANG T	

ART UNIT	PAPER NUMBER
3742	

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/607,535	RYAN ET AL.	
	Examiner	Art Unit	
	Quang T Van	3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 January 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *161-164,166,169,170,172,181 and 182* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *175-180* is/are allowed.

6)☐ Claim(s) *161-164,166,169,170,172,181 and 182* is/are rejected.

7)☒ Claim(s) *167,168,173 and 174* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *27 June 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 161-164, 166, 169-170, 172 and 181-182 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 4-5, 7, 9-10 and 12-13 of U.S. Patent No. 6,600,142. Although the conflicting claims are not identical, they are not patentably distinct from each other because the differences between the two sets of claims are that, for example, the claims of the instant application recite “one or more ionomers, present in a concentration ranging from 10-70 weight percent; and a tackifier, or blend of tackifiers, present in a concentration ranging from about 1-25 weight percent; and a polar carrier present in a concentration ranging from 10 to 30 weight percent wherein said components are blended with one another and form a mixture, and wherein said one or more ionomers is present in an amount effective to allow said composition to be heated by radio frequency energy”, whereas the claims of the US Patent No. 6,600,142 merely recite “a susceptor present in a concentration ranging from about 50 to 70 weight

percent; and polar carrier present in a concentration ranging from about 10 to 30 percent weight percent; wherein said polar carrier and said susceptor are blended with one another and form a mixture, and wherein said susceptor is present in an amount effective to allow said composition to be heated by radio frequency energy" as recited in claim 1, "said susceptor comprises an ionomeric adhesive" as recited in claim 4, "said additives are selected from the group consisting of tackifiers..." as recited in claim 7, " said composition comprises ... a tackifier" as recited in claim 12, and said composition comprises ...about 1 to 25 weight percent of a tackifier" as recited in claim 13. The claims of the instant application are merely broader than the claims of the US Patent No. 6,600,142. The claims of the US Patent No. 6,600,142 "anticipate" the application claims. Therefore, the two set of claims are not patentable distinct.

3. Claims 167-168, 173-178 and 179-180 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Amendment

4. Applicant's arguments filed 1/25/2005 have been fully considered but they are not persuasive.

Applicants argue that "Claims 161-166 and 169-172 are rejected under judicially created doctrine of obviousness-type double patenting ...Applicants respectfully request that this rejection be held in abeyance until all other issues are resolved" as recited in Remarks, page 10, "*I. Double Patenting Rejections*" paragraph. Since all other issues

have been resolved, a terminal disclaimer must be filed in order to over come the above rejection.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang T Van whose telephone number is 571-272-4789. The examiner can normally be reached on 8:00Am 7:00Pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

QV
April 4, 2005

Quang T Van
Primary Examiner
Art Unit 3742